

### **REMARKS**

This Application has been carefully reviewed in light of the final Office Action transmitted April 6, 2007 (the "Office Action"). The Office Action rejects Claims 1-5, 7-13 and 15-19. Applicant respectfully requests reconsideration and favorable action in this case.

#### **Section 103 Rejections**

The Examiner rejects Claims 1-5, 7, 9-13, 15 and 17-19 under 35 U.S.C. 103(a) as being unpatentable over European Patent Office Publication No. 1096713 to Yoshizawa et al. ("*Yoshizawa*") in view of U.S. Patent Publication No. 2003/0223682 to Kinoshita et al. ("*Kinoshita*"). The Examiner rejects Claims 8 and 16 under 35 U.S.C. 103(a) as being unpatentable over *Yoshizawa* in view of *Kinoshita*, as applied to Claims 1-5, 7, 9-13, 15 and 17-19 above, and further in view of U.S. Patent Publication No. 2002/0048066 to Antoniadis et al. ("*Antoniades*"). Applicant respectfully traverses these rejections.

In response to Applicant's previous argument that *Kinoshita* is not available as a prior art reference for use in Section 103 rejections because at the time the invention of the present Application was made the subject matter of *Kinoshita* and the claimed invention were both subject to an obligation of assignment to Fujitsu Network Communications, Inc., the Office Action states that *Kinoshita* qualifies as a Section 103 prior art reference under Section 102(a) based on its publication date of December 3, 2003. Office Action, p. 8. However, while Applicant respectfully submits that patentable distinctions exist between the cited references and the pending claims, Applicant has attached a Declaration Pursuant to 37 C.F.R. § 1.131 swearing behind *Kinoshita*. Therefore, Applicant respectfully contends that *Kinoshita* no longer qualifies as a Section 103 reference under Section 102(a). Instead, it only qualifies as a Section 103 prior art reference under Section 102(e). However, as indicated above and discussed previously, Section 103(c) prevents *Kinoshita* from being available as a prior art reference for use in Section 103 rejections. Applicant thus respectfully requests allowance of Claims 1, 9 and 17 and all claims depending therefrom.

**CONCLUSION**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad C. Walters, Attorney for Applicant, at the Examiner's convenience at (214) 953-6511.

The Commissioner is hereby authorized to charge the amount of \$790.00 in payment of the required fee to file a Request for Continued Examination, any other fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicant



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Attachment: Declaration Pursuant to 37 C.F.R. §1.131

Date: July 5, 2007

**CORRESPONDENCE ADDRESS:**

Customer Number: **05073**